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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,717	01/02/2001	Cecile Bebot	05725.0826-00	1012
22852	7590	02/10/2005	EXAMINER	
FINNNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILLO, EISA B	
		ART UNIT	PAPER NUMBER	
		1751		

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/750,717	BEBOT ET AL.	
	Examiner	Art Unit	
	Eisa B Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 November 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-91 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-91 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- 1 This action is responsive to the remarks filed on November 3, 2004.
- 2 The rejection of claims 1-6, 9-20, 26, 29-39 and 43-91 under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (US 4,842,849), is maintained for the reasons set forth in the previous office action mailed on 7/21/2004.
- 4 The rejection of claims 7-8, 21-25, 27-28 and 40-42 under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (US 4,842,849) in view of De la Mettrie et al. (WO 99/17727), is maintained for the reasons set forth in the previous office action mailed on 7/21/2004.

Response to Applicant's Arguments

- 5 Applicant's arguments filed 11/3/2004 have been fully considered but they are not persuasive.

With respect to the rejection of the claims under 35 U.S.C, based upon Grollier et al. (US' 849), Applicant argues that there is no motivation or suggestion to modify the teaching of the cited reference to obtain the presently claimed invention. Applicant also argues that there is no reasonable expectation of success in doing so. Further, the applicant argues that the reference describes a composition that contains anionic polymer with vinylsulphonic units.

The examiner respectfully disagrees with the above arguments because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. "*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having

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ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), cert. denied, 493 U.S. 975 (1989). In this case Grollier et al. (US' 849) teaches a composition for dyeing keratin fibers comprising at least one cationic polymer (see abstract) or cationic polymer or polymers (see col. 13, line 48), which implies that more than one cationic polymer, can be used in the composition. Therefore, there is a sufficient motivation to one having ordinary skill in the art to formulate a dyeing composition comprising any combination of cationic polymers includes the cationic cyclohomopolymer and quaternary polyammonium polymer as claimed, because all these cationic polymers are suggested by the prior art and they are available to the skilled person to be used in dyeing compositions with a reasonable expectation of achieving composition for dyeing hair. Therefore, a *prima facie* case of obviousness has been established.

Furthermore, the open language of the claims "comprising" allowed a person of ordinary skill in the art to add more dyeing ingredients in the dyeing composition in the absence of a showing unexpected results.

With respect to the rejection of the claims under 35 U.S.C. (103) based upon Grollier et al. (US' 849) in view of de la Mettrie et al. (US' 145 B1), Applicant argues that there is no motivation or suggestion to combine the teachings of the references.

The examiner respectfully disagrees with the above argument for the same reasons mentioned above.

6 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

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MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
February 4, 2005



MARGARET EIN-SMAN
PRIMARY EXAMINER
GROUP 1100